IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2622 OF 2006

Sajid Ali Rahim Ali
Sheikh @ Mamu .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.A.S.Khandeparkar i/b. M/s.Khandeparkar & Associates for appelicant
Mr.P.A.Pol, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 31st August 2006

P.C.

. Applicant is the original accused No.2 in

C.R. No.21 of 2005 registered under sections 329, 379 read with section 34 I.P.C. at Sawantwadi Police Station.

2. A complaint was registered at the instance of one Arun Deolekar. His case is that he was travelling from Mumbai to Goa in Konkan Kanya Express on 17th January 2005. He boarded the train at Dadar. It is his case that there were other passengers in the compartment along with three young persons sitting across him. They insisted that he should have some biscuits along with them. He refused and went to sleep. Next morning on 18th January 2005 after waking up he had tea and once again these three persons offered him some wafers and biscuits. According to him, after eating them the taste was bitter and he threw away the biscuits. He again felt sleepy and went to sleep. When he regained consciousness on 20th January 2005 he was at the Hospital in Madgaon. He, thereafter, realised

that the cash which was carrying with him so also the gold ring of 7 grams was stolen. A complaint was lodged against unknown persons. Crime was registered at Sawantwadi police station. The applicant was arrested. After investigations were over and charge sheet was filed, Applicant applied for bail and the same was rejected.

3. Mr.Khandeparkar learned Advocate appearing for applicant submits that the earlier application for bail was rejected. Application after the charge sheet is filed has been rejected by a cryptic order by the trial court. He submits that the identification parade was conducted after four months. It is his case that although, there is a reference to the recovery of Muddemal, there is no panchanama drawn of the articles. That apart, the matter was adjourned at the instance of learned A.P.P. on 14th August 2006 to find out whether there are any antecedents.

4. In all fairness, learned Advocates for both sides referred to two C.Rs. bearing C.R.No.75 of 2004 and 28 of 2005 both registered at Bandra Police Station, Mumbai against the applicant alleging identical offences. However, Mr.Khandeparkar has produced copies of the judgement of the sessions court in Sessions Case No.504 of 2005 pertaining to C.R. 28 of 2005 and Sessions Case No.503 of 2005 pertaining to C.R.75 of 2004. A perusal of these judgements would indicate that the applicant before me was arrayed as accused No.2 in both these matters and he has been acquitted in both cases. Learned A.P.P. submits that in this case, there is recovery of articles at the instance of the applicant inasmuch as Rexin Bag was recovered and the articles therein clearly belonged to the complainant. In such circumstances and when the applicant has been accused of committing similar offences in the past, the applicant should not be

granted bail.

5. After perusal of the entire materials, in my view, in the light of the fact that the applicant has been acquitted in the earlier cases where the charge is also identical and in this case all investigations are complete and charge is filed, the applicant's case for bail can be considered favourably and by imposing stringent conditions, he can be enlarged on bail. Hence, following order:-

i) The applicant arrested in connection with C.R.No.21 of 2005 registered with Sawantwadi Police Station shall be enlarged on bail subject to furnishing a personal bond of Rs.10,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to

condition that the applicant will remain present before the concerned investigating officer of Sawantwadi Police Station once in a fortnight till conclusion of the trial.

iii) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution

witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)